

MINUTES
Montana Fish, Wildlife & Parks Commission
Helena Headquarters
1420 East 6th Avenue
Helena, MT 59620

CONFERENCE CALL
October 17, 2003

Commission Members Present: Chairman Dan Walker, Tim Mulligan, Mike Murphy, John Lane, John Brenden.

Fish, Wildlife & Parks Staff: Director Jeff Hagener, Don Childress, Hank Worsech, Glenn Erickson, Jeff Herbert, Deb Dils, Kurt Alt, Al Rosgaard, Ron Aasheim; Bob Lane, Larry Peterman, Martha Williams, Regena Peterson.

Guests: Courtney Lowry, Associated Press

Topics of Discussion:

1. **September 11, 2003 Meeting Minutes**
2. **Gordon Conservation Easement - Final**
3. **Hunting District 314-23 Regulations - Final**
4. **Hunting District 311 - Special Permits on Flying D Ranch**

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**Chairman Dan Walker** called the Commission Conference Call meeting to order at 8: 35 a.m.

**1. September 11, 2003 Meeting Minutes.**

*Action: **Lane** moved and **Brenden** seconded the motion to approve the September 11, 2003 Commission meeting minutes. Motion carried.*

**2. Gordon Conservation Easement - Final.** This conservation easement is 15,157 acres of privately owned land in Blaine County, and consists of native prairie grasslands and wetlands. The Gordon Ranch is operated as four units, however, this easement would only involve two of the units, entitled Border Unit and Fifteen Mile Creek Unit. Commissioners Dan Walker, John Lane, and John Brenden toured the Gordon Ranch on October 16, 2003 to assist them in their decision to approve or disapprove of this easement. Commissioner Tim Mulligan has toured the Ranch in the past so is familiar with it.

**Don Childress, FWP Wildlife Division Administrator**, said that while on the tour, several questions were brought up regarding oil and gas issues on this property. **Deb Dils, FWP Land Section Supervisor**, said she and the Gordons met with the current oil and gas lessee, Beam Energy Company from North Dakota, to review this

proposed easement, and they were in favor of it. Beam Energy provided copies of their research results regarding the mineral rights as they affect the Gordon Ranch. They stated they would not have a problem working with FWP on this project. **Brenden** asked if other people owned mineral rights on this property, to which **Dils** responded that there are approximately 93 other owners. He asked if these people had been contacted to inform them of this proposed easement. **Dils** replied no, as this easement agreement is strictly between FWP and the Gordon Cattle Company. The Gordon family still maintains their rights to continue operations as before. **Dils** said this easement restricts only surface mining. **Brenden** pointed out that the easement agreement bans coalbed methane. **Dils** said if someone has mineral interests, and wishes to develop coalbed methane requiring surface disturbance, they still have the right to do that under applicable laws pertaining to this. The Gordon family has agreed not to do that. **Brenden** stated that placing more rules and regulations on mineral rights results in land and minerals becoming less desirable and less valuable. **Jeff Hagner, FWP Director**, said there would be no impact on any mineral rights owners other than the Gordons; the terms of the easement are to allow oil and gas rights to the Gordons. **Dils** agreed, saying that Henry Gordon had made it very clear he wished to retain oil and gas rights.

**Henry Gordon, Gordon Ranch**, stated that he has a letter from an authorized appraiser who specializes in mineral rights, who indicated this easement will have no consequence on oil and gas development, or the price of the minerals as they are today. He said that when drillers cross Gordon's land to access federal ground, they always advise him that they will pay for any damages to roads etc. Gordon added that he feels damages reflect on him as well, therefore he feels obligated to mend any damages as he becomes aware of them.

**Murphy** asked what percentage of the mineral rights Gordon Cattle Company holds in comparison with other owners' interests? Gordon said approximately 70%. He added that his land has not been drilled on for 15 years, and the Fifteen Mile Unit has never been drilled on.

**Commissioner Brenden** stated that he wished the following to be entered into the Commission record. The following is verbatim. **Brenden** said "I want to set the record straight, whether FWP wants to believe it or not. I just called the FSA office this morning on conservation sites, and it says all through this that the potholes, if they are broken up, will be drained or filled, or the possibility thereof. First of all, if you're going to break up any land, you can't afford not to take government payments, and if you take government payments, and if you drain or fill a pothole, your behind is more than gonna be sore. And when people say that you can do this, they don't know what the hell the farm program is, and I ask for the record, that you can call the department if you don't believe me, so that isn't going to be a factor, and you've just seen in the newspapers in the last few days about the Steven's family being fined 2.8 million dollars. They spent a million dollars in litigation because they are being accused by this agricultural department of creating too many entities, getting too many dollars. If you do that, draining and filling of potholes, and you take government money, you're going to end up just like the Steven's family, or at least alleged what they did was wrong, and that is not a pleasant experience, I can tell you. Nobody would ever want to go through that. So, that's the contention."

**Childress** agreed, but he said based on his experience with draining and filling of wetlands, and the many discussions he has been engaged in, there may be a number of changing definitions that allow the drainage of what FWP considers wetlands. **Brenden** stated this cannot be done if agricultural dollars are utilized, and he added that if there is a real wetland involved, the Corp of Army Engineers can take over.

**Brenden** said there is no question that some of the land on the lower unit (Fifteen Mile Unit) could be broken up, however, it is not financially feasible to break up land in the Border Unit. He does not feel the potential for cultivating the land would be a concern in this acreage. Brenden then pointed out that over the course of the four-hour tour, they did not observe a great deal of game.

**Walker** said part of the controversy surrounding this easement is the wording of the Environment Assessment. He said it needs “tightened up”. He added that when making global statements regarding the drainage of wetlands, it is important to fully understand the issue before making those statements.

**Childress** explained that FWP applied for grant funds through the North American Wetlands Act. Conservation easements are considered as allowable match requirements for this grant. The Gordon conservation easement would leverage an additional \$650,000 for the current Pothole Joint Venture program. If this proposal does not move forward, the grant match will not be sufficient to move forward. This is additional money - it does not defray the expense of buying the easement.

**Mulligan** said it is important to look at the big picture. The Commission’s responsibility is to implement the statute that the legislature intended. He said the intent of that statute is clear, and he does not feel it is up to the Commission to decide the validity of the statute. What needs to be determined is if this easement meets the intent of the statute, and **Mulligan** said he feels it does meet the intent.

**Brenden** said it’s a matter of priorities, and he does not feel this is a priority project. **Mulligan** said FWP does go through a prioritization procedure on proposed projects, and he added that there are no current short native prairie grass easements, so in his opinion, that should make this proposal a priority.

**Lane** said he does not recall ever struggling over a conservation easement like has been done with this one. He said he is not totally convinced that this is a good use of sportsmen dollars, however, he recognizes there are professionals in the Department who feel differently and recommend this one.

*Action: Lane moved and Mulligan seconded the motion to approve the acquisition of the conservation easement from the Gordon Cattle Company on the Fifteen Mile Unit and Border Units of the Ranch at a cost of \$945,000.*

*Vote:*

*Brenden – No*

*Lane –Yes*

*Mulligan – yes*

*Murphy – yes*

*Walker - yes*

*Motion carried.*

**3. Hunting District 314-23 Regulations - Final.** **Childress** said FWP has continued to receive comments regarding the error that was printed in the hunting regulations regarding HD 314-23. The error allowed for two weeks of either sex hunting after the regular season, and was discovered after the regulations and permits had been printed. Region 3 originally recommended changing the regulations regarding those last two weeks, however, the Department now recommends going forward as printed. FWP will send letters to the permit holders affirming that no changes were made, and that the Department encourages them to hunt during the regularly established season. FWP will also notify them that conditions will be monitored closely, and that the Commission has the authority to close any season within a 48-hours notice. Region 3 will have people watching and assessing conditions. **Childress** said since the Department recommends no change, no action is required by the Commission.

**Lane** asked what kind of conditions will effect a 48-hour closure. **Childress** said heavy snow and significant cold weather that would push elk out of the park. **Kurt Alt, FWP Region 3 Wildlife Manager**, said the Region 3 biologist and warden agreed it would take the same kind of conditions that would require closure of Decker Flats. A huge movement of elk out of the Park would prompt a safety issue on Decker Flats, and would create the potential to over-harvest the rest of the District, similar to 1991 when the high harvest rate initiated the 48-hour provision on Decker Flats.

**Mulligan** asked if weather or other factors might trigger the local elk herd into doing something that would put themselves or the park herd at risk. **Alt** said that was his initial concern as well, however he now does not feel they would. He said many of the local population would be in the northerly end of the southerly portion of 314-23, which consists of a lot of that is private land.

**Mulligan** asked how FWP plans to monitor the harvest. **Childress** replied that there will be Department personnel watching, the local biologist and warden will be watching, and sportsmen will be watching. There is not an official check station at this time. He said it is not a biological issue in the sense of specific numbers. **Mulligan** said there will be unhappy people about this season structure, the decline on the elk numbers, and the impact on the economy, and he said it is important to respond to their concerns.

**Mulligan** asked if the Commission can congregate quickly enough if a 48-hour closure is determined to be necessary. **Childress** replied that a 48-hour closure can be implemented via a conference call.

**Childress** said no motion is required from the Commission if it is their decision to proceed with the regulations as they are printed. **Mulligan** stated he is uncertain as to whether he is in favor of this, but will agree to it. **Brenden** and **Murphy** commended the Department for taking responsibility for the mistake, and agreed to this decision. **Walker** and **Lane** expressed no objections.

**4. Hunting District 311-20 and Hunting District 311-21 - Special Permits on Flying D Ranch.** Hunting District 311-20 and 311-21 are for either sex elk, are available only to youth aged 12-14, or qualifying disabled veterans, and are valid on the Flying D Ranch. At the June, 2003 Commission meeting, a motion was passed to increase the tentative quotas in HD311-20 and HD311-21 from 1 to 4. At the August meeting, these quotas were passed with 4 permits. The Flying D Ranch has refused to accept the additional permits. They would like to meet with FWP prior to decisions such as these.

**Childress** reminded the Commissioners of the proposed option that **Alt** had provided to them (all stated they had received the information), which is to reassign one permit holder from each District to the Gardiner Late Season hunt. The permit holder would be selected randomly, and **Alt** would meet with them individually to schedule their hunt prior to issuing them new permits. This would provide a special opportunity to two permit holders. **Walker** said he finds this alternative agreeable. **Childress** stated he merely wants this addressed and entered into the record, and requested a motion on this issue.

*Action: Mulligan moved and Brenden seconded the motion to approve the proposal to reassign and issue two permits to one permit holder in each of the two districts (HD311-20 and 311-21) for the Gardiner Area Late Season hunt as recommended by the Department. Motion carried.*

**Walker** asked **Alt** to notify the Commissioners after meeting with each holder and their families. **Alt** said he would and he felt it will go well.

Meeting adjourned at 9:17 a.m.

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Dan Walker, Chairman

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M. Jeff Hagener, Director